UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

February 28, 2013

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7010 2780 0002 4353 6341

Mr. Steve Bissot
Plant Manager
Orion Engineered Carbons, LLC
1513 Echo Avenue
Orange, Texas 77632-2059

Subject: Notice and Finding of Violation
Orion Engineered Carbons, Carbon Black Plant
Orange, Orange County, Texas

Dear Mr. Bissot:

Enclosed is a Notice and Finding of Violation (Notice) pursuant to Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. §7413(a). This Notice is issued to Orion Engineered Carbons (Orion) for violations of the Nonattainment New Source Review, Prevention of Significant Deterioration and Title V requirements under the CAA and the Texas State Implementation Plan at its Orange, Texas, facility. In accordance with Confidential Business Information (CBI) regulations, we have not included any CBI in the Notice.

Please note the opportunity to confer outlined in the Notice. Any request to confer should be directed to Jan Gerro, Assistant Regional Counsel. Ms. Gerro can be reached at (214) 665-2121.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: Jack Clem
CEO
Orion Engineered Carbons, LLC

Michael De La Cruz
Air Enforcement Section Manager
Texas Commission on Environmental Quality

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
	)	
ORION ENGINEERED CARBONS, LLC	)	NOTICE OF VIOLATION
	)	
1513 ECHO AVENUE	)	
ORANGE, TEXAS 77632-2059	)	

NOTICE OF VIOLATION

This Notice of Violation (Notice) is issued to Orion Engineered Carbons, LLC (Orion) for violations of the Clean Air Act (CAA or the Act), 42 U.S.C. §§ 7401 *et seq.*, at its carbon black manufacturing plant located in Orange, Orange County, Texas. Specifically, Orion has violated the Prevention of Significant Deterioration (PSD) and the New Source Review (NSR) permitting requirements of the Texas State Implementation Plan (SIP) at its Orange, Texas facility.

This Notice is issued pursuant to section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). Section 113(a) of the CAA requires the Administrator of the United States Environmental Protection Agency (EPA) to notify any person in violation of a SIP or permit of the violations. Also included is notice regarding the federal regulations. The authority to issue this Notice has been delegated to the Regional Administrator of EPA Region 6, and re-delegated to the Director, Compliance Assurance and Enforcement Division, EPA Region 6.

A. STATUTORY AND REGULATORY BACKGROUND

1. The Clean Air Act is designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

The National Ambient Air Quality Standards

2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to identify and prepare air quality criteria for each air pollutant, emissions of which may endanger public health or welfare, and the presence of which results from numerous or diverse mobile or stationary sources. For each such "criteria" pollutant, Section 109 of the Act, 42 U.S.C. § 7409, requires EPA to promulgate national ambient air quality standards (NAAQS) requisite to protect the public health and welfare.

3. Pursuant to Sections 108 and 109, 42 U.S.C. §§ 7408 and 7409, EPA has identified nitrogen oxides (NO_x), sulfur dioxide (SO_2), carbon monoxide (CO) and particulate matter less than 10 micrometers (PM_{10}) as criteria pollutants, and has promulgated NAAQS for such pollutants. *See* 40 C.F.R §§ 50.4 - 50.17. Volatile organic compounds (VOC) and NO_x are precursors to the formation of ozone in both nonattainment areas and attainment areas. *See* 40 C.F.R. §§ m (a)(1)(xxxvii)(C)(*1)* and 52.21(b)(50)(i)(*a*).

4. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is termed an "attainment" area with respect to such pollutant. An area that does not meet the NAAQS for a particular pollutant is termed a "nonattainment" area with respect to such pollutant.

5. An area that cannot be classified as either "attainment" or "nonattainment" with respect to a particular pollutant due to insufficient data is termed "unclassifiable" with respect to such pollutant.

6. At all times relevant to this Notice, Orange, Orange County, Texas the area in which the Facility is located, has been classified as either attainment or unclassifiable for SO_2, CO and PM_{10}.

7. At all times relevant to this Notice, Orange, Orange County, Texas has been classified as nonattainment for ozone (NO_x) either under the 1-hour ozone standard or under the 8-hour ozone standard.

Prevention of Significant Deterioration

8. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in those areas designated as either attainment or unclassifiable for purposes of meeting the NAAQS standards. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision making process. 42 U.S.C. § 7470. These provisions are referred to herein as the "PSD program."

9. Part C of Title I of the CAA (Sections 160 through 169) establishes the federal Prevention of Significant Deterioration (PSD) permitting program and requires each state to include a PSD program as part of its SIP.

10. Section 165(a) of the CAA, 42 U.S.C. § 7475(a), among other things, prohibits the construction and operation of a "major emitting facility" in an area designated as attainment or unclassifiable for the applicable National Ambient Air Quality Standards (NAAQS), without first obtaining a PSD permit and installing Best Available Control Technology (BACT).

11. Section 169(1) of the Act, 42 U.S.C. § 7479(1), designates carbon black plants which emit or have the potential to emit one hundred tons per year or more of any pollutant to be "major emitting facilities."

12. Section 169(2)(C) of the Act, 42 U.S.C. § 7479(2)(C), defines "construction" to include "modification" (as defined in Section 111(a) of the Act). "Modification" is defined in Section 111(a) of the Act, 42 U.S.C. § 7411(a), to be "any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted."

13. Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a SIP that contains emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality in areas designated as attainment or unclassifiable.

14. A state may comply with Sections 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471, by having its own PSD regulations, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166, approved by EPA as part of its SIP. If a state does not have a PSD program that has been approved by EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated by reference into the SIP. *See* 40 C.F.R. § 52.21(a).

15. On May 31, 1972, EPA approved the Texas Air Pollution Control Implementation Plan, which was later redesignated the State Implementation Plan for Texas (hereinafter referred to generally as the "Texas SIP"). *See* 37 Fed. Reg. 10,895; 40 C.F.R. § 52.2299.

16. On June 19, 1978, EPA established regulations implementing the federal PSD program at 40 C.F.R. § 52.21 and requirements for SIP approved programs at 40 C.F.R. § 52.166. *See* 43 Fed. Reg. 26403 (June 19, 1978). Since that time, the PSD regulations have been revised, with subsequent revisions incorporated under 40 C.F.R. § 52.21.

17. On June 24, 1992, EPA approved the Texas PSD program, which was effective on July 24, 1992. *See* 57 Fed. Reg. 28093 (June 24, 1992); 40 C.F.R. §§ 52.2299(c) and 52.2303. Effective October 20, 1997, Texas' PSD regulations were recodified under Title 30, Section 116.160, of the Texas Administrative Code. *See* 30 TAC §116.111; 62 Fed. Reg. 44085 (Aug. 19, 1997).

18. Pursuant to the rules approved by EPA for the Texas SIP and effective October 20, 1997, the Texas PSD program incorporated by reference the federal PSD rules at 40 C.F.R. § 52.21 (as amended June 3, 1993 and effective June 3, 1994) and required "each proposed ... major modification in an attainment or unclassifiable area" to comply with the federal regulations. *See* 30 TAC § 116.111; *see also,* 40 C.F.R. § 52.21. All citations to the PSD regulations herein refer to the provisions of the Texas SIP incorporated into and made a part of the Texas SIP as applicable at the time of the major modifications alleged herein.

19. In addition, the Texas PSD program requires "before any actual work is begun on the facility, any person who plans to...engage in the modification of any existing facility which may emit air contaminants into the air of Texas must obtain a permit to construct pursuant to 116.111." 30 TAC § 116.110(a). *See also* 31 TAC § 116.1(a)(Supp. 1992), 31 TAC § 116.1(a)(Supp. 1993), and 30 TAC § 116.1(a)(Supp. 1993).

20. The PSD regulations set forth in 30 TAC § 116.160 apply to a "major stationary source" that intends to construct a "major modification" in an attainment or unclassifiable area. 30 TAC § 116.160. *See also* 31 TAC § 116.3(a)(13) (Supp.1992) and 31 TAC § 116.3(a)(11)(1993).

21. Under the PSD regulations, "major stationary source" is defined to include carbon black facilities which emit or have the potential to emit 100 tons per year or more of any air pollutant subject to regulation. *See* 40 C.F.R.§ 52.21(b)(1)(i); *see also,* 30 TAC § 116.12(10), 31 TAC § 116.3(a)(13)(Supp. 1992) and 31 TAC § 116.3(a)(11)(1993).

22. Under the PSD regulations, "major modification" is defined as "any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in paragraph (b)(40) of this section) of a regulated NSR pollutant;... and a significant net emissions increase of that pollutant from the major stationary source." 40 C.F.R. § 52.21(b)(2)(i); *see also,* 30 TAC § 116.12(11), 31 TAC § 116.3(a)(13)(Supp.1992) and 31 TAC § 116.3(a)(11)(1993).

23. "Significant" is defined in relevant part to mean, "in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, at a rate of emissions that would equal or exceed any of the following rates:"

Nitrogen oxides (NOx):	40 tons per year (tpy)
Sulfur dioxide (SO_2):	40 tpy
Carbon monoxide (CO):	100 tpy
Volatile organic compounds (VOC):	40 tpy
Hydrogen sulfide (H_2S):	10 tpy
Total reduced sulfur (TRS) (including H_2S)	10 tpy
Particulate Matter – 10 micrometers	15 tpy
Particulate Matter – 2.5 micrometers	10 tpy

40 C.F.R. § 52.21(b)(23)(i); *see also*, 30 TAC § 116.12, 31 TAC § 116.3(a)(13)(Supp. 1992) and 31 TAC § 116.3(a)(11)(1993).

24. Under the PSD regulations, "net emissions increase" means the amount by which the sum of the following exceeds zero: "any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source" and "any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable." 40 C.F.R. § 52.21(b)(3)(i); *See also*, 30 TAC § 116.12(13), 31 TAC § 116.3(a)(13)(Supp. 1992) and 31 TAC § 116.3(a)(11)(1993).

25. "Construction" is defined to mean "any physical change or change in the method or operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions." 40 C.F.R. § 52.21(b)(8); *see also* 30 TAC § 116.12(6), 31 TAC § 116.3(a)(13)(Supp. 1992) and 31 TAC § 116.3(a)(11)(1993).

26. If a source is a major stationary source in an attainment or unclassifiable area planning to construct a major modification under the foregoing definitions, then it is subject to the requirements contained in 30 TAC § 116.160. *See also* 31 TAC § 116.3(a)(13)(Supp. 1992) and 31 TAC § 116.3(a)(11)(1993).

27. A major stationary source subject to the requirements of 30 TAC § 116.160 must, among other things, perform an analysis of source impacts, perform air quality modeling and analysis, apply BACT, and allow for meaningful public participation in the process. 30 TAC § 116.160. *See also* 31 TAC § 116.3(a)(Supp. 1992) and 31 TAC § 116.3(1993).

The Non-Attainment New Source Review Program

28. Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, sets forth provisions for New Source Review ("NSR") requirements for areas designated as being in nonattainment with the NAAQS standards. These provisions are referred to herein as the "Nonattainment NSR" program. The Nonattainment NSR program is intended to reduce emissions of air pollutants in areas that have not attained NAAQS so that the areas make progress towards meeting the NAAQS. Prior to the effective date of the 1990 Clean Air Act Amendments, P. Law 101-549, effective November 15, 1990, the Nonattainment NSR provisions were set forth at 42 U.S.C. §§ 7501-7508.

29. Section 172(c)(5) of the Nonattainment NSR provisions of the Act, 42 U.S.C. § 7502(c)(5), require each state to adopt Nonattainment NSR SIP rules that include provisions to require permits that conform to the requirements of Section 173 of the Act, 42 U.S.C. § 7503, for the construction and operation of modified major stationary sources within nonattainment areas. Section 173 of the Act, in turn, sets forth a series of minimum requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503.

30. On March 25, 1980, EPA approved the Texas Nonattainment NSR program, which was effective on March 25, 1980. Texas Air Control Board (TACB), Regulation VI, Sections 101 and 116 of the Texas SIP. *See* 45 Fed. Reg. 19244 (March 25, 1980); 40 C.F.R. § 52.2270(c)(20)–(23), and subsequent amendments.

31. Section 173(a) of the Act, 42 U.S.C. 7503(a), provides that construction and operating permits may be issued if, *inter alia*:

"(a) sufficient offsetting emission reductions have been obtained to reduce existing emissions to the point where reasonable further progress towards meeting the national ambient air quality standards is maintained; and

(b) the pollution controls to be employed will reduce emissions to the "lowest achievable emission rate (LAER)."

32. Under the Nonattainment NSR regulations, LAER means, the more stringent rate of emissions based on the following:

(A) The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(B) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance. 42.U.S.C. § 7501(3)(A) and (B). 40 C.F.R. § 51.165(a)(1)(xiii).

33. Section 182(c) of the Act, 42 U.S.C. 7511a(c), enacted as part of the Clean Air Amendments of 1990, set forth additional requirements to take effect no later than November 15, 1992, regarding the construction and operation of new or modified major stationary sources of NO_x located within serious nonattainment areas for ozone.

34. A "major stationary source" of NO_x is one that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant. However, lower emissions thresholds shall apply in areas subject to subpart 2 of part D, title I of the Act, according to 40 C.F.R. § 51.165(a)(1)(iv)(A)(*1*). . *See also*, 30 TAC § 116.12(11)(A).

35. Under the Nonattainment NSR regulations, "modifications" and "modified" mean the same as the term "modification" as used in section 7411(a)(4) of this title. 42 U.S.C. 7501(4). *See also*, 40 C.F.R. § 51.165(a)(1)(v)(A) and 30 TAC § 116.12(11)(A).

36. In nonattainment areas, a "significant" net emissions increase of NO_x is one that would result in increased emissions of 40 tons per year or more [marginal or moderate], except in areas designated as serious ozone nonattainment where increased emissions of 25 tons per year or more apply. 42 U.S.C. 7511a(c). *See also*, 40 C.F.R. § 51.165(a)(1)(x)(B) and 30 TAC § 116.12(11)(A).

Federal Title V Requirements

37. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See* 57 Fed. Reg. 32295; 40 C.F.R. Part 70. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. *See* 61 Fed. Reg. 34228; 40 C.F.R. Part 71.

38. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to submit a timely, accurate, and complete application for a permit, including information required to be submitted with the application.

39. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan.

40. 40 C.F.R. § 70.1(b) provides that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." *See also*, 30 TAC § 122.120(a), and 30 TAC § 122.121.

41. 40 C.F.R § 70.2 defines "applicable requirement" to include "(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter . . ." *See also*, 30 TAC § 122.10(2).

42. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. *See also*, 30 TAC § 122.121.

43. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. *See also*, 30 TAC §§ 122.130(b)(2), 122.132(a) and (b), 122.133, and 122.134.

44. 40 C.F.R. § 70.5(b) provides that: "Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit." *See also*, 30 TAC §§ 122.132, 122.136 and 122.142.

Texas' Title V Requirements

45. EPA granted full approval of the Texas Title V program on November 30, 2001. 40 C.F.R. Part 70, Appendix A. Texas' Title V program became effective on that date. *See* 61 Fed. Reg. 39597.

46. The Texas regulations governing the Title V permitting program are codified at Title 30 of the Texas Administrative Code (TAC), and are federally enforceable pursuant to Section 113(a)(3) of the Act. The Texas regulations provide that no

major source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. *See* 30 TAC § 122.

47. 30 TAC § 122.121 requires that, "owners and operators of sites identified in § 122.120 of this title (relating to Applicability) shall not operate emission units at those sites without a permit issued or granted under this chapter." 30 TAC § 122.121.

48. 30 TAC § 122.501 and 30 TAC § 122.502 subsequently provides that the granting of a permit to operate is conditioned upon the facility demonstrating that:

    a. The facility is complying with the Rules and Regulations of the State of Texas and the intent of the Texas Clean Air Act.

    b. The facility has been constructed and is being operated in accordance with the requirements and conditions contained in the permit to construct.

    c. The facility is being operated in accordance with any applicable new source performance standards promulgated by the EPA pursuant to authority granted under Section 111 of the CAA, as amended.

    d. The facility is being operated in accordance with any applicable emission standard for hazardous air pollutants promulgated by the EPA pursuant to authority granted under Section 112 of the CAA, as amended.

B. FACTUAL BACKGROUND

49. Orion owns and operates a carbon black manufacturing facility in Orange, Orange County, Texas (Facility).

50. Orion is a privately owned company. Orion is hereinafter referred to as "Respondent."

51. Respondent is a "person" within the meaning of sections 113(a) and 502 of the CAA, 42 U.S.C. §§ 7413(a) and 7661a, and as defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e).

52. At the Facility, Respondent operates three carbon black units (Units 1, 2 and 3). Respondent partially combusts and thermally decomposes a heavy oil feed in a low oxygen reactor under controlled conditions, thus producing solid carbon particles which are recovered as the carbon black product. The carbon black is then dried, pelletized, and packaged.

53. The Facility meets the definition of a "major stationary source" in 40 C.F.R. §§ 51.165(a)(1)(iv)(A)(*1*) and 52.21(b)(1)(i)(a) because it is a carbon black plant that has the potential to emit in excess of 100 tons per year of the following regulated pollutants: of NO_x, SO_2, CO, VOC, H_2S, TRS, and PM_{10}.

54. Orange, Orange County, Texas is designated as either attainment or unclassifiable for SO_2, CO and PM_{10}. *See* 40 C.F.R. § 81.344.

55. Orange, Orange County, Texas is designated as nonattainment for ozone (NO_x) either under the 1-hour ozone standard or under the 8-hour ozone standard.. *See* 40 C.F.R. § 81.344.

56. The Facility currently operates under a Title V Permit (Permit Number: O-1660) that was issued by the Texas Commission on Environmental Quality (TCEQ) on January 21, 2005, revised on February 25, 2008; renewed on August 31, 2010; and revised on November 8, 2010. The Facility also operates under a PSD Permit (PSD-TX-627) that was first issued by the Texas Air Control Board on July 3, 1984; revised on June 13, 1986; August 31, 1995; and August 21, 2003.

57. By information request letter issued pursuant to the authority of Section 114 of the Act, 42 U.S.C. § 7414, dated October 29, 2010, EPA required Respondent to submit specific information regarding its carbon black manufacturing facilities located within Region 6.

58. The Respondent provided responses to EPA's information requests on February 3, 2011 and March 29, 2011.

C. VIOLATIONS

59. Upon review of the information provided by Respondent, referenced above in Paragraph 58, EPA Region 6 has concluded that Respondent conducted capital projects on carbon black units at the Facility which increased the Facility's capacity to produce carbon black.

60. Furthermore, the projects referenced below in Paragraphs 61 through 94 also meet the definition of "major modification" provided under both 40 C.F.R. §§ 51.165(a)(1) and 52.21(b)(2)(i), 30 TAC § 116.12, 31 TAC § 116.3(a)(13) (Supp. 1992) and 31 TAC §116.3(a)(11)(1993), because they represent: a physical change in, or a change in the method of operation of, a major stationary source that resulted in a significant emissions increases of a regulated NSR pollutant(s) (specifically NO_x, SO_2, CO, and PM_{10}), and significant net emissions increases of those pollutants from a major stationary source.

(1) Failure to Obtain NSR/ PSD Permits Prior to Making a Major Modification to Unit 1 in or about February 1995 (NOx, and SO_2 Emissions Increases)

61. Beginning in or about February 1995, Respondent made a modification to Unit 1 by replacing the process bagfilter with an upgraded bagfilter. The modification resulted in increased capacity at the unit.

62. The modification triggered "significant" net emissions increases in NO_x and SO_2 emissions as defined in 40 C.F.R. §§ 51.165(a)(1)(x), 52.21 (b)(23) and 31 TAC § 116.3(a)(13)(Supp. 1992) and is therefore considered a "major modification" as defined in 40 C.F.R. §§ 51.165(a)(1)(v), 52.21(b)(2)(i) and 31 TAC § 116.3(a)(13)(Supp. 1992).

63. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit 1 at the Facility in or about February 1995, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable NSR/PSD regulations, specifically those provided under 40 C.F.R. §§ 51.165(b)(1), 52.21(j)-(r), 52.21(i)(1) and 31 TAC 116.1(a)(Supp. 1992).

64. In failing to apply LAER and BACT to the major modification made to Unit 1 at the Facility in or about February 1995, and commencing operations each day thereafter without applying necessary technologies under LAER and BACT, Respondent continues to accrue violations of applicable NSR/PSD requirements for major modifications, specifically those provided under 40 C.F.R. §§ 51.165, 52.21(j)(3) and 31 TAC § 116.3(a)(3)(Supp. 1992).

65. In reinitiating (restart of facility processes after a major modification), and continuing to operate the Facility in or about February 1995, without obtaining or applying for the required permits to operate following completion of the major modification to Unit 1, Respondent continues to accrue violations of applicable NSR/PSD regulations.

(2) Failure to Obtain NSR/PSD Permits Prior to Making a Major Modification to Unit 3 in or about November 1995 (NO_x and SO_2 Emissions Increases)

66. In or about November 1995, Respondent made a modification to Unit 3 by changing and relocating the reactor quench and improving the design of the reactor tailpipe. The modifications resulted in increased capacity at the unit.

67. The modification triggered "significant" net emissions increases in NO_x and SO_2 emissions as defined in 40 C.F.R. §§ 51.165(a)(1)(x), 52.21 (b)(23) and 31 TAC § 116.3(a)(13)(Supp. 1992) and is therefore considered a "major modification" as defined in 40 C.F.R. §§ 51.165(a)(1)(v), 52.21(b)(2)(i) and 31 TAC § 116.3(a)(13)(Supp. 1992).

68. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit 3 at the Facility in or about November 1995, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable NSR/PSD regulations, specifically those provided under 40 C.F.R. §§ 51.165(b)(1), 52.21(j)-(r), and 52.21(i)(1) and 31 TAC 116.1(a)(Supp. 1992).

69. In failing to apply LAER and BACT to the major modification made to Unit 3, at the Facility in or about November 1995, and commencing operations each day thereafter without applying necessary technologies under LAER and BACT, Respondent continues to accrue violations of applicable NSR/PSD requirements for major modifications, especially those provided under 40 C.F.R. §§ 51.165, 52.21(j)(3) and 31 TAC § 116.3(a)(3)(Supp. 1992).

70. In reinitiating, and continuing to operate the Facility in or about November 1995, without obtaining or applying for the required permits to operate following completion of the major modification to Unit 3, Respondent continures to accure volations of applicable NSR/PSD regulations.

(3) Failure to Obtain NSR/PSD Permits Prior to Making a Major Modification to Unit 2 beginning in or about December 1996 (NO_x, SO_2, and PM_{10} Emissions Increase)

71. In or about December 1996, Respondent made a modification to Unit 2 by adding studs to a dryer drum and installing hot gas piping to the dryer. The modification resulted in increased capacity at the unit.

72. The modification triggered "significant" increases in NO_x, SO_2, and PM_{10} emissions as defined in 40 C.F.R. §§ 51.165(a)(1)(x), 52.21 (b)(23) and 31 TAC § 116.3(a)(11)(1993) and is therefore considered a "major modification" as defined in 40 C.F.R. §§ 51.165(a)(1)(v), 52.21(b)(2)(i) and 31 TAC § 116.3(a)(11)(1993).

73. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit 2 at the Facility in or about December 1996, Respondent violated and continues to be in violation of federal and state requirements for

preconstruction permits under applicable NSR/PSD regulations, specifically those provided under 40 C.F.R. §§ 51.165(b)(1), 52.21(j)-(r), and 52.21(i)(1) and 31 TAC 116.1(a)(1993).

74. In failing to apply LAER and BACT to the major modification made at Unit 2 at the Facility in or about December 1996, and commencing operations each day thereafter without applying necessary technologies under LAER and BACT, Respondent continues to accrue violations of applicable NSR/PSD requirements for major modifications, specifically those provided under 40 C.F.R. §§ 51.165 and 52.21(j)(3) and 31 TAC § 116.3(a)(3)(1993).

75. In reinitiating, and continuing to operate the Facility in or about December 1996, without obtaining or applying for the required permits to operate following completion of the major modification to Unit 2, Respondent continues to accrue violations of applicable NSR/PSD regulations.

(4) Failure to Obtain NSR/PSD Permits Prior to Making a Major Modification to Unit 3 in or about July 2006 (NO_x, SO_2, CO, and PM_{10} Emissions Increases)

76. In or about July 2006, Respondent made a modification to Unit 3 by replacing an air preheater with a larger capacity air preheater. The modification resulted in increased capacity at the unit.

77. The modification triggered "significant" net emissions increases in NO_x, SO_2, CO, and PM_{10}, emissions as defined in 40 C.F.R. §§ 51.165(a)(1)(x), 52.21 (b)(23) and 30 TAC § 116.12 and is therefore considered a "major modification" as defined in 40 C.F.R. §§ 51.165(a)(1)(v), 52.21(b)(2)(i) and 30 TAC § 116.12.

78. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit 3 at the Facility in or about July 2006, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable NSR/PSD regulations, specifically those provided under 40 C.F.R. §§ 51.165(b)(1), 52.21(j)-(r), and 52.21(i)(1) and 30 TAC 116.110(a) .

79. In failing to apply LAER and BACT to the major modification made to Unit 3 at the Facility in or about July 2006, and commencing operations each day thereafter without applying necessary technologies under LAER and BACT, Respondent continues to accrue violations of applicable NSR/PSD requirements for major modifications, specifically those provided under 40 C.F.R. §§ 51.165, 52.21(j)(3), 30 TAC §§ 116.111(2)(C) and 116.150(a)(1).

80. In reinitiating and continuing to operate the Facility in or about July 2006, without obtaining or applying for the required permits to operate following completion of the major modification to Unit 3, Respondent continues to accrue violations of applicable NSR/PSD regulations.

(5) Failure to Obtain NSR/PSD Permits Prior to Making a Major Modification to Unit 1 in or about November 2006 (NO_x, SO_2 , CO and PM_{10}, Emissions Increases)

81. In or about November 2006, Respondent made a modification to Unit 1 by increasing the number of oil coil tubes for oil preheating. The modification resulted in increased capacity at the Facility.

82. The modification triggered "significant" net emissions increases in NO_x, SO_2, CO, and PM_{10} emissions as defined in 40 C.F.R. §§ 51.165(a)(1)(x), 52.21 (b)(23) and 30 TAC § 116.12 and is therefore considered a "major modification" as defined in 40 C.F.R. §§ 51.165(a)(1)(v), 52.21(b)(2)(i) and 30 TAC § 116.12.

83. In failing to apply for and obtain authority, via necessary construction permits, prior to modifying Unit 1 at the Facility in or about November 2006, Respondent violated and continues to be in violation of federal and state requirements for preconstruction permits under applicable NSR/PSD regulations, specifically those provided under 40 C.F.R. §§ 51.165(b)(1), 52.21(j)-(r), and 52.21(i)(1) and 30 TAC 116.110(a).

84. In failing to apply LAER and BACT to the major modification made to Unit 1 at the Facility in or about November 2006, and commencing operations each day thereafter without applying necessary technologies under LAER and BACT, Respondent continues to accrue violations of applicable NSR/PSD requirements for major modifications, specifically those provided under 40 C.F.R. §§ 51.165, 52.21(j)(3) and 30 TAC §§ 116.111(2)(C) and 116.150(a)(1).

85. In reinitiating and continuing to operate the Facility in or about November 2006, without obtaining or applying for the required permits to operate following completion of the major modification to Unit 1, Respondent continues to accrue violations of applicable NSR/PSD regulations.

(6) Failure to Obtain NSR/PSD Permits Prior to Making a Major Modification to Unit 1 in or about February 2010 (NO_x, CO, and PM_{10} Emissions Increases)

86. In or about February 2010, Respondent made a modification to Unit 1 by changing the method of operation to produce different grades of carbon black at a higher capacity.

87. The modification triggered "significant" net emissions increases in NO_x, CO, and PM_{10} emissions as defined in 40 C.F.R. §§ 51.165(a)(1)(x), 52.21 (b)(23) and 30 TAC § 116.12 and is therefore considered a "major modification" as defined in 40 C.F.R. §§ 51.165(a)(1)(v), 52.21(b)(2)(i) and 30 TAC § 116.12.

88. In failing to apply and obtain authority, via necessary construction permits, prior to modifying Unit 1 at the Facility in or about February 2010, Respondent continues to be in violation of federal and state requirements for preconstruction permits under applicable NSR/PSD regulations, specifically those provided under 40 C.F.R. §§ 51.165(b)(1), 52.21(j)-(r), and 52.21(i)(1) and 30 TAC 116.110(a).

89. In failing to apply LAER and BACT to the major modification made to Unit 1 at the Facility in or about February 2010, and commencing operations each day thereafter without applying necessary technologies under LAER and BACT, Respondent continues to accrue violations of applicable NSR/PSD requirements for major modifications, specifically those provided under 40 C.F.R. §§ 51.165, 52.21(j)(3) and 30 TAC §§ 116.111(2)(C) and 116.150(a)(1).

90. In reinitiating and continuing to operate the Facility in or about February 2010, without obtaining or applying for the required permits to operate following completion of the major modification to Unit 1, Respondent continues to accrue violations of applicable NSR/PSD regulations.

(7) Failure to Include LAER and BACT in the Title V Permit

91. On January 21, 2005, Respondent obtained Federal Operating Permit No. O1660. The Title V permit was deficient, as it did not include LAER and BACT requirements for projects that should have gone through NSR/PSD review for the following pollutants: NO_x, SO_2, and CO.

92. A renewal for Permit No. O1660 was issued on August 31, 2010. That Title V permit was deficient, as it did not include LAER and BACT requirements for projects that should have gone through NSR/PSD review for the following pollutants: NO_x. SO_2, CO and PM_{10}.

93. Accordingly, the Title V permit issued on January 21, 2005, and renewed on August 31, 2010, did not include emissions limitations for NO_x, SO_2, CO and PM_{10} that assure compliance with the NSR/PSD requirements of the Act and the Texas SIP.

94. In failing to assure compliance with all applicable emissions limitations, specifically those requiring that it incorporate LAER and BACT for NO_x, SO_2, CO, and PM_{10} into its permit applications and subsequent permits, Respondent violated and continues to violate Section 502(a) and 504(a) of the Act, 42 U.S.C. Sections 7761a(a), and 7761c(a), as well as 40 C.F.R. sections 70.5 and 70.6(a) and the Texas Title V Operating Permit regulations at 30 TAC Chapter 122.

D. ENFORCEMENT

Sections 113(a)(1) and (3) of the Act, 42 U.S.C. § 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, inter alia, the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or the PSD provisions of the Texas SIP. *See also* 40 C.F.R. § 52.23.

Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to $25,000 per day for each violation occurring on or before January 30, 1997; up to $27,500 per day for each such violation occurring on or after January 31, 1997 and up to and including March 15, 2004; up to $32,500 per day for each such violation occurring on or after March 16, 2004 through January 12, 2009; and up to $37,500 per day for each such violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 74 Fed. Reg. 626 (Jan. 7, 2009) against any person whenever such person has violated, or is in violation of, inter alia, the requirements or prohibitions described in the preceding paragraph.

Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

E. OPPORTUNITY FOR CONFERENCE

Orion may, upon request, confer with EPA. The conference will enable Orion to present evidence bearing on the finding of violations, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. Orion has a

right to be represented by counsel. A request for a conference must be made within ten (10) days of receipt of this Notice, and the request for a conference or other inquiries concerning the Notice should be made in writing to:

Jan Gerro (6RC-EA)
Assistant Regional Counsel
Air Enforcement Branch
Office of Regional Counsel, Region 6
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733

If you have any questions, please feel free to call Ms. Gerro at (214) 665-2121.

F. EFFECTIVE DATE

This Notice shall become effective immediately upon issuance.

Dated: 2·28·13

John Blevins
Director
Compliance Assurance and
Enforcement Division